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Lawful Permanent Residency: What the United States Citizenship & Immigration Services Giveth, It Can Also Take Away

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LAWFUL PERMANENT RESIDENCY: WHAT THE UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES GIVETH, IT CAN ALSO TAKE AWAY

Abstract: Millions of foreigners strive to become Lawful Permanent Residents of the United States, but that status is limited to those immigrants who meet certain requirements and comply with extensive procedures. There is ample U.S. case law interpreting what it means to be "lawfully admitted for permanent residence." Until the Sixth Circuit's decision in 2017 in *Kamal Turfah v. United States Citizenship & Immigration Services*, however, no circuit court had found that a solely procedural error committed by U.S. immigration authorities could prevent an otherwise eligible immigrant from receiving lawful admission for Lawful Permanent Residency. This Comment assesses the unique situation that the plaintiff in *Turfah* presented when he was deemed unlawfully admitted, not because of his lack of entitlement to lawful permanent residency, but because U.S. immigration authorities failed to prevent him from entering the country before his father. Further, this Comment analyzes the consequences of the Sixth Circuit's decision that places an undue burden on immigrants to ensure that immigration authorities are not negligent in their duties, as well as leaves immigrants who were otherwise entitled to lawful permanent residency with their status in flux and with no clear pathway to naturalization.

INTRODUCTION

Citizenship through naturalization in the United States is a highly-coveted status.[1] Every year, approximately six million applications are received from foreigners seeking to become Lawful Permanent Residents ("LPRs") in the United States.[2] In 2015, 1,051,031 people became LPRs

[1] *See* U.S. Citizenship & Immigration Servs. ("USCIS"), *Naturalization Fact Sheet* (May 19, 2017), https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet [https://perma.cc/9H2Q-RQ4Y] (recording that over half a million citizens are naturalized in the United States every year, with over seven million people naturalized in the last ten years); U.S Dep't of Homeland Sec. ("DHS"), *Table 20. Petitions for Naturalization Filed, Persons Naturalized, and Petitions for Naturalization Denied: Fiscal Years 1907 to 2015* (Dec. 15, 2015), https://www.dhs.gov/immigration-statistics/yearbook/2015/table20 [https://perma.cc/E5CP-DVQH] (recording that levels of petitions for U.S. naturalization have increased dramatically since the 1990s and continue to be high).

[2] USCIS, *Immigration and Citizenship Data* (Feb. 28, 2018), https://www.uscis.gov/tools/reports-studies/immigration-forms-data [https://perma.cc/YXS3-WW5V].

who presumably will eventually pursue naturalization.[3] In 2016, 752,800 people became naturalized citizens.[4] These numbers demonstrate that U.S. immigration policy affects millions of people, and any case law that further defines or restricts the path to naturalization in the United States has widespread implications.[5]

News coverage regarding immigrants and their endeavors to become residents in the United States is pervasive.[6] Frequently, this coverage focuses on instances of immigrant fraud or misrepresentation.[7] A rarely depicted situation, however, is one where an immigrant with a valid legal claim to LPR status is denied the chance to naturalize as a result of procedural errors committed by U.S. immigration authorities.[8] In 1995, Kamal Turfah immigrated to the United States from Lebanon and received LPR status through a

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[3] RYAN BAUGH & KATHERINE WITSMAN, DHS OFFICE OF IMMIGRATION STATISTICS, U.S. LAWFUL PERMANENT RESIDENTS: 2015 1 (2017), https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2015.pdf [https://perma.cc/9KB6-9NZZ].

[4] USCIS, *Naturalization*, *supra* note 1.

[5] *See* Tal Kopan, *Trump Administration Adding Extra Hurdle for Green Cards*, CNN (Aug. 29, 2017), http://www.cnn.com/2017/08/28/politics/trump-administration-green-cards-interviews/index.html [https://perma.cc/5A6Y-PCJ8] (noting that an interview may be enforced for green card applicants that will lengthen the process in an effort to protect against fraud impacting around 180,000 people); David Nakamura, *Trump Administration Announces End of Immigration Protection Program for 'Dreamers,'* WASH. POST (Sept. 5, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/09/05/trump-administration-announces-end-of-immigration-protection-program-for-dreamers/?utm_term=.094f9d67dd55 [https://perma.cc/Q93M-2GD7] (noting that hundreds of thousands of immigrants will be impacted and potentially forced to begin deportation proceedings when U.S. government rescinds the Deferred Action for Childhood Arrivals ("DACA") immigration program).

[6] *See* Kopan, *supra* note 5 (reporting that green card applications may become a lengthier process due to the Trump Administration's decision to enforce an interview requirement for applicants in an effort to combat fraud); Nakamura, *supra* note 5 (reporting on the Trump Administration's plan to end the DACA program that allowed hundreds of thousands of immigrants who arrived in the United States as children to remain in the country); Chris Stirewalt, *Can GOP Find Consensus on Immigration?*, FOX NEWS (Sept. 5, 2017), http://www.foxnews.com/politics/2017/09/05/can-gop-find-consensus-on-immigration.html [https://perma.cc/9YLA-NHG4] (reporting on the divide in Congress about immigration issues and the uncertain future for DACA recipients).

[7] *See* Gardiner Harris, *State Department Tightens Rules for Visas to U.S.*, N.Y. TIMES (Sept. 18, 2017), https://www.nytimes.com/2017/09/18/us/politics/us-visa-rules-tillerson.html [https://perma.cc/Y66A-AUAR] (discussing the Trump Administration's changes to immigration policy in the hopes of preventing abuse of the legal immigration process); Newsweek Archives, *For Many Immigrants, Marriage Is the Fastest and Easiest Way to Legal Rights*, NEWSWEEK (Aug. 8, 2017), http://www.newsweek.com/immigration-legal-mating-game-647912 [https://perma.cc/BL4Q-SB75] (discussing the frequency of marriage fraud in order to obtain visas); Ron Nixon, *Visa Program up for Renewal Amid Allegations of Fraud*, N.Y. TIMES (Sept. 11, 2016), https://www.nytimes.com/2016/09/12/us/politics/visa-program-up-for-renewal-amid-allegations-of-fraud.html [https://perma.cc/J5D7-KW9L] (discussing the fraud plaguing the EB-5 visa).

[8] Turfah v. U.S. Citizenship & Immigration Servs., 845 F.3d 668, 670 (6th Cir. 2017) "*Turfah II*".

derivative visa.[9] Though Turfah had no trouble with his LPR status for almost twenty years, when he attempted to naturalize in 2012, he found out that because of the negligence of immigration authorities, he was not lawfully admitted for permanent residency.[10] He was subsequently barred from naturalizing.[11]

Part I of this Comment discusses the history of LPR status in the United States and a key requirement in achieving naturalized citizenship—lawful admission for permanent residency.[12] This requirement, although initially ambiguously defined, has undergone extensive interpretation by numerous circuit courts.[13] Part I explains these decisions and details the expansion of "lawful admission" provided by the United States Court of Appeals for the Sixth Circuit in *Turfah v. United States Citizenship & Immigration Services*.[14] Part II dives deeper into the *Turfah* decision and addresses how the majority reached its conclusion that the plaintiff was not lawfully admitted.[15] Additionally, it discusses the novelty of the court's decision that procedural errors committed by U.S. immigration authorities are sufficient to render an otherwise eligible immigrant unlawfully admitted.[16] Finally, Part III argues that the holding in *Turfah* has unforeseen consequences in that it places a burden on immigrants to police the negligence of immigration authorities and fails to establish a practical way for immigrants to rectify deficiencies with their LPR statuses.[17]

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[9] *Id.* at 670, 673; *see* Immigration and Nationality Act, 8 U.S.C. § 1153(d) (2012) (stating that the child of a recipient of Lawful Permanent Residence ("LPR") status who is not separately eligible for LPR status can receive immigrant status if they are "accompanying or following to join" their parent); *see also* USCIS, FILING FOR PERMANENT RESIDENCE BASED ON A FAMILY PETITION 4, https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Customer%20Service%20Reference%20Guide/Permanent_Residents_Fam.pdf [https://perma.cc/NQ8V-SZTH] (defining a derivative visa holder as an immigrant who does not have their own claim to reside in the United States, but who can "follow to join" or "accompany" a spouse or parent with a valid claim to U.S. residency).

[10] Turfah v. U.S. Citizenship & Immigration Servs., No. 2:15-CV-10371, 2016 WL 362456, at *1 (E.D. Mich. Jan. 29, 2016), *aff'd*, 845 F.3d 668 (6th Cir. 2017) "*Turfah I*"..

[11] *Turfah I*, 2016 WL 362456, at *1, *4.

[12] *See infra* notes 18–54 and accompanying text.

[13] *See infra* notes 33–54 and accompanying text.

[14] *See infra* notes 33–70 and accompanying text.

[15] *See infra* notes 71–89 and accompanying text.

[16] *See infra* notes 90–102 and accompanying text.

[17] *See infra* notes 103–135 and accompanying text.

I. THE ELUSIVE AND EVOLVING DEFINITION OF "LAWFUL ADMISSION" IN THE UNITED STATES

Section A of this Part provides an introduction to the history of immigration laws in the United States.[18] It explains the requirements to become a LPR, including that an immigrant must be lawfully admitted for permanent residence.[19] Further, Section A details how federal courts have interpreted the phrase "lawful admission."[20] Section B discusses how Turfah's case arrived in front of the Sixth Circuit and provides an overview of the court's holding.[21]

A. A Brief History of U.S. Federal Immigration Laws and the Judiciary's Interpretation of "Lawful Admission"

In 1875, in *Henderson v. Mayor of New York*, the Supreme Court declared that the obligation of creating and managing U.S. immigration law fell to the federal government.[22] This decision led to a series of legislative reforms regulating who could enter the country.[23] These reforms sought to limit immigration through legislation prohibiting aliens with certain qualities, changes in tax policies, and the establishment of new enforcement agencies.[24] Beginning in 1940, the United States started to require foreign nationals to register and to document their right to reside in the country.[25] A person with a documented claim to permanently remain in the United States is considered a LPR.[26] LPRs have the opportunity to legally work in the

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[18] *See infra* notes 22–32 and accompanying text.

[19] *See infra* notes 29–54 and accompanying text.

[20] *See infra* notes 33–54 and accompanying text.

[21] *See infra* notes 55–70 and accompanying text.

[22] Henderson v. Mayor of N.Y., 92 U.S. 259, 274 (1875) (ruling that the federal government, and Congress specifically, is more qualified to regulate immigration in a consistent and appropriate way than the states); USCIS, *Early American Immigration Policies* (Sept. 4, 2015), https://www.uscis.gov/history-and-genealogy/our-history/agency-history/early-american-immigration-policies [https://perma.cc/MH28-EDWG].

[23] USCIS, *Early American*, *supra* note 22.

[24] *Id.*

[25] *See* 8 U.S.C. § 1301 (stating that an immigrant must be registered with the government in order to receive a visa); CitizenPath, *History of the Green Card* (Feb. 21, 2017), https://citizenpath.com/history-green-card/ [https://perma.cc/G6SC-GQ2H] (detailing the history of LPR status). In 1940, documenting an immigrant's legal right to reside in the United States included getting fingerprinted and registering at the local post office. CitizenPath, *supra*. As immigration numbers increased, registration expanded to official immigration offices. *Id.* Those determined to have legitimate claims to reside in the United States were issued cards that detailed their status. *Id.*

[26] BAUGH & WITSMAN, *supra* note 3; *see also* Juliana Jiménez Jaramillo, *Why Isn't My Green Card Green?*, SLATE (July 4, 2012), http://www.slate.com/articles/life/design/2012/07/green_card_history_u_s_immigrants_vital_document_through_the_years_.html [https://perma.cc/XUD5-TSVB] (noting that the name "green card" comes from the green paper upon which immigrant's documented claims to reside in the United States were historically printed).

United States, receive financial aid, serve in the military, attend school, and own land.[27] In addition, LPRs have the chance to naturalize and become U.S. citizens after living in the country for five years and fulfilling additional eligibility requirements.[28]

Since 1952, the Immigration and Nationality Act ("INA") has been the law governing U.S. immigration and citizenship policy.[29] Section 316 of the INA discusses the requirements to become a naturalized citizen.[30] Pursuant to Section 316, an alien must have been "lawfully admitted for permanent residence" in the United States to be eligible for naturalization.[31] The INA defines "lawfully admitted for permanent residence" as the status an individual has when he or she was legally permitted to immigrate to and permanently live in the United States.[32]

This definition has been refined by the Board of Immigration Appeals ("BIA").[33] In 2003, in *In re Koloamatangi*, the BIA held that an alien has not been "lawfully admitted for permanent residence" if he or she acquired

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[27] BAUGH & WITSMAN, *supra* note 3.

[28] *See* 8 U.S.C. § 1427(a) (listing the requirements for naturalization, including residing in the United States for five consecutive years as a lawful permanent resident and having "good moral character"); USCIS, *Naturalization*, *supra* note 1 (describing additional eligibility requirements including "good moral character," English literacy, a historical understanding of the United States, status as a legal adult, swearing an oath, and receipt of LPR status through lawful admission).

[29] *See* 8 U.S.C. §§ 1101–1537 (incorporating the Immigration and Nationality Act ("INA") as Title Eight of the U.S. Code); USCIS, *Immigration and Nationality Act* (Sept. 10, 2013), https://www.uscis.gov/laws/immigration-and-nationality-act [https://perma.cc/GXG9-BK5P] (indicating that the INA has been amended since its inception in 1952, but still remains the governing statute over U.S. immigration and citizenship); *see also* Jerry Kammer, *The Hart-Celler Immigration Act of 1965*, CTR. FOR IMMIGR. STUD. (Sept. 30, 2015), https://cis.org/HartCeller-Immigration-Act-1965 [https://perma.cc/E754-6STU] (indicating that the 1965 amendment of the INA, which adopted a major policy change that eradicated the previous immigration quota system, was in response to widespread criticism of the prior federal immigration legislation's (the 1924 Johnson-Reed Act) racial discrimination).

[30] 8 U.S.C. § 1427(a) (listing the requirements for naturalization, including residing in the United States for five consecutive years as a LPR and having good moral character).

[31] *Id.*

[32] *See id.* § 1101(a)(20) (defining "lawfully admitted for permanent residence").

[33] 8 C.F.R. § 1003.1 (2018). The Board of Immigration Appeals ("BIA") was created within the Department of Justice to provide appellate review and rule clarifications, as well as to administer U.S. immigration laws. *Id.* The BIA is comprised of twenty-one attorneys, one of whom is Chairman of the Board. *Id.* The BIA is authorized to hear immigration cases from across the country, and it conducts paper reviews, rather than trials in court, but the opportunity for oral argument can be requested. *Id.* The BIA's judgments are binding law, unless overturned by a federal court's ruling or by the Attorney General. *Id.*; *see also* Koloamatangi, 23 I&N Dec. 548, 549–51 (B.I.A. 2003) (interpreting "lawfully admitted for permanent residence" to mean that the visa must have been acquired without fraud, misrepresentation or mistake); U.S. Dep't of Justice, *Board of Immigration Appeals* (Mar. 16, 2017), https://www.justice.gov/eoir/board-of-immigration-appeals, [https://perma.cc/V9NR-6WHD] (noting that the BIA conducts paper reviews of cases, has nationwide jurisdiction, and its decisions are binding).

LPR status through "fraud or misrepresentation" or "had otherwise not been entitled to it."[34] The respondent in *Koloamatangi* obtained LPR status by marrying a U.S. citizen; however, the marriage was later determined to be knowingly fraudulent because the respondent was still legally married to a woman in Tonga.[35] The BIA stated that an alien's lawful admission not only requires following the procedural rules of immigration policies, but also conforming to the essential substance of the law.[36] The BIA found that the respondent's fraudulent marriage violated substantive immigration law and as a result, the respondent was never lawfully admitted.[37] In its analysis, the BIA relied on the Fifth Circuit's decision in *In re Longstaff*, holding that, even when an immigrant is forthright, if the immigrant unintentionally violates substantive law regarding LPR eligibility, he is still not lawfully admitted.[38]

Several circuit courts addressing the "lawful admission" issue adopted the holding in *Koloamatangi* and determined that aliens were not lawfully admitted if granted LPR status as a result of error or "had otherwise not been entitled to it."[39] Every circuit court addressing the "lawful admission" issue upheld the BIA's reasoning in *Koloamatangi* that fraud, deception, and lack of entitlement are bars to "lawful admission."[40]

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[34] *Koloamatangi*, 23 I&N Dec. at 549–50 (holding that a respondent who committed marriage fraud by marrying a U.S. citizen while already married had procured his LPR status through fraud and thus was never eligible for LPR status). According to *Black's Law Dictionary*, fraud is defined as "a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment." *Fraud*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[35] *Koloamatangi*, 23 I&N Dec. at 549.

[36] *Id.* at 550 (noting that to obtain something lawfully means to comply with the legal obligations associated with it); *see also In re Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983) (arguing that obtaining a visa through appropriate procedure alone is insufficient and that an alien must also comply with the substantive obligations of the law to achieve lawful admission into the United States).

[37] *Koloamatangi*, 23 I&N Dec. at 551.

[38] *Id.* at 550; *see Longstaff*, 716 F.2d at 1441 (concluding that the plaintiff, who was homosexual, was unlawfully admitted to the United States when he responded "no" to an application question asking if he suffered from "psychopathic personality"). At the time, Congress included homosexuality in the definition of "psychopathic personality," but the plaintiff was unaware of this definition. *Longstaff*, 716 F.2d at 1441. Although the plaintiff followed correct procedure, and did not intend to lie in his application, the court found that his sexual orientation was a barrier to lawful admission because it rendered him excludable under immigration law at the time; therefore, he was not lawfully admitted. *Id.*

[39] *Turfah II*, 845 F.3d at 672; *Koloamatangi*, 23 I&N Dec. at 550; *see also* Estrada-Ramos v. Holder, 611 F.3d 318, 321 (7th Cir. 2010) (holding that an alien had not met lawful admission because he had once pled guilty to a cocaine offense which was a bar to visa eligibility); Savoury v. U.S. Attorney Gen., 449 F.3d 1307, 1313 (11th Cir. 2006) (holding that an alien was not lawfully admitted as a LPR because he failed to disclose a cocaine possession conviction).

[40] *Turfah II*, 845 F.3d at 672 (adopting the BIA's interpretation of lawful admission from *Koloamatangi*); *see also* Injeti v. U.S. Citizenship & Immigration Servs., 737 F.3d 311, 315–16

For instance, in *Injeti v. United States Citizenship & Immigration Services*, the Fourth Circuit reasoned that an immigrant who had submitted a fraudulent death certificate for her spouse and lied about prior marriages had intentionally misrepresented herself and deceived the U.S. government.[41] The court ruled that the plaintiff was not "lawfully admitted" as a permanent resident because she was only awarded LPR status as a result of this misrepresentation.[42] Further, the Fourth Circuit stated that even if the plaintiff's misrepresentation was not willful or intentionally fraudulent, an immigrant can fail to achieve "lawful admission" if that immigrant was simply not entitled to LPR status.[43]

The Seventh Circuit observed that in addition to deception and falsification, failure to disclose disqualifying information also provides a basis for violating "lawful admission."[44] In *Estrada-Ramos v. Holder*, the court reasoned that the plaintiff's failure to disclose an expunged cocaine possession conviction, while not necessarily intentional misrepresentation, was still an offense that would have rendered him otherwise ineligible for LPR status.[45]

In *Arellano-Garcia v. Gonzales*, the Eighth Circuit ruled that an immigrant was not "lawfully admitted" after it was later determined that he had been convicted of drug trafficking and illegal reentry following his deportation.[46] The prosecutor in *Gonzales* could not prove that the plaintiff had in-

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(4th Cir. 2013) (adopting *Koloamatangi*'s holding and finding an immigrant is not lawfully admitted if the LPR status is received "by fraud—or who was not otherwise entitled to it"); WRONG *Estrada-Ramos*, 611 F.3d at 321 (adopting the BIA's definition of "lawfully admitted for permanent residence"); *Savoury* 449 F.3d at 1317 (adopting the BIA's definition of lawfully admitted and finding it "reasonable"); Arellano-Garcia v. Gonzales, 429 F.3d 1183, 1187 (8th Cir. 2005) (adopting the BIA's definition of lawfully admitted and finding it "reasonable"); *Koloamatangi*, 23 I&N Dec. at 550.

[41] *Injeti*, 737 F.3d at 314.

[42] *Id.* at 314–15.

[43] *Id.* at 317. The Fourth Circuit explained that although deliberate fraud will violate lawful admission, lawful admission can also be hindered regardless of an immigrant's intention. *Id.* Here, because the plaintiff was not "otherwise entitled" to LPR status, she was not lawfully admitted, even if her fraud was accidental. *Id.*

[44] *See* 8 U.S.C. § 1182(a)(2)(A)(i)(II) (rendering all aliens who have violated a U.S. controlled substance law or conspired or attempted to violate a law inadmissible for any U.S. visa or entry into the country); *Estrada-Ramos*, 611 F.3d at 320–21 (noting that although Estrada-Ramos did not commit fraud to get his LPR status, he was not eligible for it, and only obtained it because of his undisclosed conviction).

[45] *Estrada-Ramos*, 611 F.3d at 320–21.

[46] *Gonzales*, 429 F.3d at 1184, 1186–87 (noting that the plaintiff served nine months in prison for the possession and sale of cocaine, an aggravated felony that bars him from LPR status under the INA, as did his illegal return to the United States after his deportation following his sentence). Although the government mistakenly granted the plaintiff LPR status, he was not entitled to it absent the mistake and thus was not lawfully admitted. *Id.*

tentionally deceived the government in obtaining his LPR status.[47] But, in consensus with other circuit court holdings, the court held that willful fraud was not required to violate "lawful admission."[48] This decision expanded *Koloamatangi* by stating that admission was unlawful if an alien only received LPR status due to a "negligent mistake" committed by immigration authorities.[49] In *Gonzales*, regardless of the plaintiff's intent, there were sufficient factors to prevent the plaintiff from being eligible for LPR status, and the government's failure to note his prohibitive felony conviction did not change the fact that the plaintiff was never eligible for LPR and thus not lawfully admitted.[50]

Similarly, the Eleventh Circuit held in *Savoury v. United States Attorney General* that an alien is not "lawfully admitted" when immigration services negligently grants LPR status.[51] In this case, the plaintiff proactively informed Immigration and Naturalization Services ("INS") of his drug possession conviction and the conviction was recorded by INS.[52] Despite this notice, INS subsequently provided the plaintiff with LPR status.[53] When the error was realized, INS rescinded the plaintiff's LPR status on the grounds that he was never entitled to status adjustment because of his felony conviction.[54]

B. The Sixth Circuit Takes on "Lawful Admission"

The Sixth Circuit did not rule on the definition of "lawfully admitted for permanent residence" until 2017 in its decision in *Turfah*.[55] Turfah is a Lebanese citizen who has been living in the United States as a LPR since

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[47] *Id.* at 1186.

[48] *Id.* at 1187; *see Injeti*, 737 F.3d at 315 (stating that, even absent fraud, admission is unlawful if it fails to comply with immigration law or was received by mistake); *Holder*, 611 F.3d at 321 (stating that fraud is not the only means of finding admission unlawful).

[49] *See Gonzales*, 429 F.3d at 1186–87 (emphasizing that, despite being unable to prove that the plaintiff committed intentional fraud, the fact that the plaintiff's LPR status was granted due to government negligence in failing to recognize the plaintiff's prohibitive felony conviction does not render his LPR status lawful).

[50] *Gonzales*, 429 F.3d at 1186–87.

[51] *Savoury*, 449 F.3d at 1317.

[52] *Id.* at 1310–11; *see also* USCIS, *Did You Know?: The INS No Longer Exists* (Apr. 13, 2011), https://www.uscis.gov/archive/blog/2011/04/did-you-know-ins-no-longer-exists [https://perma.cc/EEN8-253Z] (stating that the Immigration and Naturalization Service (INS) was a separate agency that was a predecessor to USCIS, but closed in 2003, and its functions were adopted by USCIS).

[53] *Savoury*, 449 F.3d at 1310.

[54] *See* 8 U.S.C. § 1182(a)(2)(A)(i)(II) (rendering all aliens who have violated a U.S. controlled substance law or conspired or attempted to violate a law inadmissible for any U.S. visa or entry into the country); *Savoury*, 449 F.3d at 1317.

[55] *See Turfah II*, 845 F.3d at 672.

his entry into the country on September 23, 1995.[56] Turfah arrived in the United States at nineteen years old on a derivative visa permitting him to enter the country "accompanying or following to join" his father, the principal LPR.[57] But, Turfah arrived in the United States alone, twenty-four days before his father entered the country.[58] U.S. immigration authorities erroneously admitted Turfah early, instead of informing him that he needed to wait to enter the country with, or after, his father.[59]

After his admission, Turfah remained in the United States as a LPR for seventeen years and filed an application for naturalized citizenship with United States Citizenship and Immigration Services ("USCIS") on November 30, 2012.[60] On April 29, 2014, USCIS denied Turfah's naturalization application on the basis that he was not a lawfully admitted LPR because he arrived in the United States before his father in 1995, violating the terms of his derivative visa.[61] On May 16, 2014, Turfah requested an administrative review of the denial of his application; his application was again denied by USCIS on December 29, 2014.[62]

Turfah then filed suit against USCIS on January 28, 2015, in the U.S. District Court for the Eastern District of Michigan, seeking judicial review of the denial of his naturalization application.[63] Both parties filed motions for summary judgment, and the district court granted USCIS' motion, concluding that Turfah was not lawfully admitted as a LPR, and, therefore, was ineligible for naturalization.[64] Turfah appealed to the Sixth Circuit.[65] This appeal forced the Sixth Circuit to address whether a procedural mistake

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[56] *Id.* at 670.

[57] *Id.*; 22 C.F.R. § 40.1(a)(1)–(a)(2) (2018) (defining an accompanying applicant to a principle visa holder as someone who cannot arrive before the principal applicant). The court in *Turfah II* spends a good deal of time analyzing the language of the derivative visa provision, concluding that "accompanying to join" means that Turfah needed to arrive in the United States with or after his father to comply with the requirements of the derivative visa. *Turfah II*, 845 F.3d at 673–74.

[58] *Turfah II*, 845 F.3d at 670.

[59] *Id.*

[60] *Turfah I*, 2016 WL 362456, at *1.

[61] *Id.*

[62] *Id.*

[63] *Id.*; Petition for De Novo Review of Denial of Application for Naturalization at 1, *Turfah I*, 2016 WL 362456, at *1 (No. 15-10371) (alleging that Turfah is a valid LPR who was incorrectly denied the opportunity to naturalize).

[64] *Turfah II*, 845 F.3d at 670; *Turfah I*, 2016 WL 362456, at *1; Petitioner's Motion for Summary Judgment at 6, *Turfah I*, 2016 U.S. WL 362456, at *1 (No. 15-10371) (arguing that Turfah was lawfully admitted and that the timing error should not affect his status); Defendant's Motion for Summary Judgment at 9–10, *Turfah I*, 2016 WL 362456, at *1 (No. 15-10371) (arguing that Turfah is not eligible for naturalization because he was not lawfully admitted by virtue of his failure to comply with the substantive requirements of a derivative visa).

[65] *Turfah II*, 845 F.3d at 670.

made by U.S. immigration authorities is sufficient to invalidate an applicant's otherwise lawful admission for permanent residence.[66]

The Sixth Circuit concluded that although the violation in Turfah's case was technical and the court was sympathetic to Turfah's unique situation, *Koloamatangi's* holding that lawful admission mandates an alien comply with all substantive immigration requirements is reasonable.[67] Moreover, the court concluded that although the error in Turfah's LPR status was not based in any material issues with his application or his father's, his early entry was still a violation of derivative visa law barring him from achieving "lawful admission."[68] The court interpreted *Koloamatangi's* ruling consistently with most other circuit courts, concluding that an alien is not lawfully admitted if he or she commits fraud or lacks entitlement to LPR status.[69] The court elaborated, however, that even absent fraud or misrepresentation, admission is also unlawful if LPR status is awarded to a meritorious applicant, but the government's error leads to a procedural violation of immigration law.[70]

II. The Sixth Circuit Finds Turfah Unlawfully Admitted for Permanent Residency and Establishes Concerning New Precedent

The Sixth Circuit found that Turfah was not lawfully admitted for permanent residence because he violated 22 C.F.R. § 40.1(a)(2) by entering the United States before his father.[71] Part A of this Section details the Sixth Circuit's explanation of its decision to find Turfah unlawfully admitted for permanent residency.[72] Part B of this Section highlights the novelty of the *Turfah* decision's interpretation of lawful admission and its distinctions from other circuit courts' interpretations.[73]

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[66] *Id.*; Notice of Appeal at 1, *Turfah I*, 2016 WL 362456, at *1 (No. 15-10371) (noting that Turfah appealed the district court's grant of summary judgment in favor of USCIS).

[67] *Turfah II*, 845 F.3d at 673, 675; *Koloamatangi*, 23 I&N Dec. at 550.

[68] *See Turfah II*, 845 F.3d. at 674–75 (expressing sympathy at the denial of Turfah's naturalization "based on a technicality").

[69] *Id.* at 672; *see supra* note 40 and accompanying text (adopting the BIA's definition of "lawfully admitted for permanent residence" and finding it reasonable).

[70] *Turfah* II, 845 F.3d at 672.

[71] Turfah v. U.S. Citizenship & Immigration Servs., 845 F.3d 668, 673 (6th Cir. 2017) "*Turfah II*"; *see* 20 C.F.R. § 40.1(a)(2) (2017) (stating that an accompanying relative cannot precede the principal applicant).

[72] *See infra* notes 74–89 and accompanying text.

[73] *See infra* notes 90–102 and accompanying text.

A. An In-Depth Look at the Sixth Circuit's Reasoning in Turfah

The court's reasoning commenced with an analysis of the INA definition of "lawfully admitted for permanent residence."[74] The court stated that the INA's definition was unclear and warranted further interpretation by the BIA and other circuit courts.[75] The Sixth Circuit concluded that the BIA's clarification of the definition of lawful admission in *In re Koloamatangi*, and its approval by every circuit court to confront the issue thereafter, was properly decided.[76] In response, the Sixth Circuit determined it would also follow *Koloamatangi's* holding that an immigrant is not lawfully admitted if their LPR status is erroneously granted as a result of the government's mistake.[77]

The court highlighted the ambiguity of the INA's requirement under 8 U.S.C. § 1101(a)(20) that LPR status must be given "in accordance with the immigration laws," and postulated that two different interpretations of this phrase exist.[78] On the one hand, the court could construe this statute to mean that an immigrant is lawfully admitted so long as the immigrant is given entry by the government, even if the immigrant fails to meet all of the material requirements of LPR status.[79] Alternatively, the court could decide that an immigrant is only lawfully admitted if he or she successfully completes all of the material LPR status requirements (essentially the BIA's holding in *Koloamtangi*).[80] The court reasoned that given the statute's ambiguity, it had to show deference to the BIA's understanding of the statute, particularly because the executive branch holds a significant position in U.S. immigration policy.[81] Further, the court noted that Turfah had not claimed or produced any evidence to support the conclusion that the BIA's holding was unreasonable, and so it was forced to defer to *Koloamatangi's* definition.[82]

The court next addressed Turfah's argument that USCIS' interpretation of 22 C.F.R. § 40.1(a)(2) defining "accompanying" led to "absurd results."[83] The court stated that USCIS' interpretation of "accompanying" was consistent with the word's recognized ordinary meaning, and that in contrast,

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[74] *Turfah II*, 845 F.3d at 671.
[75] *Id.*
[76] *Id.* at 671–72.
[77] *Id.* at 672.
[78] Immigration and Nationality Act, 8 U.S.C. § 1101(a)(20) (2012); *Turfah II*, 845 F.3d at 672.
[79] *Turfah II*, 845 F.3d at 672–73.
[80] *Id.* at 673.
[81] *Id.*
[82] *Id.*
[83] *Id.*

Turfah's broad reading of the term would go against Congress' intention in writing 8 U.S.C. § 1153(d).[84] The court reasoned that Congress intended to ensure that immigrant children would arrive in the United States with or after their parents, and that since 22 C.F.R. § 40.1(a)(2) follows this interpretation, its plain meaning must be upheld.[85]

The court concluded that because Turfah preceded his father he failed to comply with 22 C.F.R. § 40.1(a)(2) and this violation means he was not lawfully admitted for permanent residency and was, therefore, ineligible to naturalize.[86] The court conceded that Turfah's case was "factually distinct" because Turfah did not commit fraud, misrepresentation, or criminal activity, but it determined that those variances were ultimately irrelevant because Turfah had statutorily violated 8 U.S.C. § 1427(a).[87]

Overall, the court's opinion focused on the statutory language of 8 U.S.C. § 1427(a) and 1153(d) and the meaning of "accompanying" when determining that Turfah was not lawfully admitted for permanent residency.[88] The court's decision paid little attention to the fact that Turfah only violated these statutes due to the error of U.S. immigration officers.[89]

B. Turfah Renders Procedural Mistakes by Governmental Agents Sufficient to Bar Otherwise Lawful Admissions

The court's decision in *Turfah v. United States Citizenship & Immigration Services* marks the first time the Sixth Circuit adopted *Koloamatangi's* definition of lawful admission.[90] This ruling expands *Koloamatangi* in an unprecedented way by holding that an immigrant can be denied LPR status as a result of a procedural error made by the U.S. government, without any other fundamental bars in the immigrant's application.[91] Although other

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[84] *Id.* at 673–74; *see also* 8 U.S.C. § 1153(d) (noting that a child can obtain a derivative visa when accompanying or following to join a parent to the United States).

[85] *Turfah II*, 845 F.3d at 674.

[86] *Id.*

[87] *Id.*

[88] *Id.* at 671–74.

[89] *See id.* at 675 (noting that immigration officers "were presumably negligent in admitting Turfah" when he arrived early).

[90] *Id.* at 672–73.

[91] *Id.* at 674–75. The court states the facts in this case are far less extreme than those involved in decisions by other circuit courts; this case distinctly involves technical violations pertaining to procedure. *Compare id.* at 674 (stating that Turfah was unlawfully admitted because he entered the United States twenty-four days too early), *with* Injeti v. U.S. Citizenship & Immigration Servs., 737 F.3d 311, 316 (4th Cir. 2013) (stating that Injeti was not lawfully admitted due to marriage fraud and submitting fraudulent documents when applying for LPR status), *and* Arellano-Garcia v. Gonzales, 429 F.3d 1183, 1184 (8th Cir. 2005) (stating that Gonzales was not lawful-

circuit courts expanded *Koloamatangi's* definition of unlawful admission to include cases without fraud, *Turfah* implicitly reasons that an alien can be unlawfully admitted even if the alien would have otherwise been eligible for LPR status absent the government's mistake.[92] Turfah and his father applied for LPR status through valid legal procedures without any fraud.[93] Moreover, Turfah's father, the principal applicant, was considered lawfully admitted as a LPR and successfully became a naturalized citizen.[94] Despite these facts, the Sixth Circuit maintained that Turfah statutorily violated the law governing derivative visas because he preceded his father twenty-four days early.[95]

The rulings in *Arellano-Garcia v. Gonzales* and *Savoury v. United States Attorney General* are similar to *Turfah* because they both conclude that their respective plaintiffs were unlawfully admitted as LPRs due to the negligence of immigration authorities.[96] In *Turfah*, however, there was no underlying substantive issue, such as a criminal history or other barring offense, to prevent Turfah from entitlement to LPR status prior to his procedural error of entering the country before his father.[97] *Gonzales* and *Savoury*

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ly admitted because he was convicted of an aggravated felony involving controlled substances, was deported, and illegally reentered the country).

[92] *See Turfah II*, 845 F.3d at 674 (noting that Turfah's LPR status issue was technical and non-fraudulent, acknowledging that Turfah's father met the lawful admission requirement and successfully retained his LPR status); *see also Injeti*, 737 F.3d at 315–16 (noting that the plaintiff was never eligible for LPR status because of marriage fraud); Estrada-Ramos v. Holder, 611 F.3d 318, 321 (7th Cir. 2010) (noting that the plaintiff was never eligible for LPR status because of a felony drug conviction); Savoury v. U.S. Attorney Gen., 449 F.3d 1307, 1317 (11th Cir. 2006) (noting that the plaintiff was never eligible for LPR because of a felony drug possession conviction); *Gonzales*, 429 F.3d at 1187 (noting that the plaintiff was never eligible for LPR status because of a felony drug possession conviction).

[93] *See* Petitioner's Motion for Summary Judgment, *supra* note 64, at 7 (describing Turfah's and his father's applications as legitimate and in compliance with visa application policy). *Compare Injeti*, 737 F.3d at 312 (describing the plaintiff's fraud through misrepresentation of a bigamous marriage and a fraudulent death certificate to acquire LPR), *with Turfah II*, 845 F.3d at 674 (describing a plaintiff whose application was honest and lacked any fraud or misrepresentation).

[94] *See generally* Petitioner's Motion for Summary Judgment, *supra* note 64.

[95] *Turfah II*, 845 F.3d at 674.

[96] *Id.* at 675; *see Savoury*, 449 F.3d at 1317 (noting that the government erroneously granted the plaintiff LPR status despite being informed of his prior drug felony conviction); *Gonzales*, 429 F.3d at 1186 (noting that the government mistakenly granted the plaintiff LPR status despite a drug felony conviction).

[97] *See Turfah II*, 845 F.3d at 674 (noting that Turfah was not lawfully admitted because he entered the country before his father); *Savoury*, 449 F.3d at 1310, 1317 (noting that the plaintiff was inadmissible and not eligible for LPR status due to his prior drug conviction, a substantive issue barring an applicant from receiving LPR status); *Gonzales*, 429 F.3d at 1187 (noting that the plaintiff was mistakenly approved for LPR status but would not have otherwise been entitled to that status because of his cocaine possession conviction, a substantive issue barring an applicant from receiving LPR status).

exhibit notable differences because their plaintiffs were both convicted of controlled substance felonies that went undiscovered by immigration authorities during the granting of their LPR statuses.[98] Had the U.S. government known of these criminal histories beforehand, it would have immediately denied both plaintiffs' applications for LPR status.[99]

In contrast, there was no criminal activity to otherwise bar Turfah's LPR application.[100] Had Turfah waited twenty-four days and arrived with his father, or had U.S. immigration authorities properly informed a teenage Turfah at the border that he was not allowed to enter without his father, there would be no reason to deny Turfah's LPR application.[101] In addition, Turfah's father's successful naturalization indicates there was no fundamental issue with their visas except for this procedural snafu at the hands of the government.[102]

III. SIXTH CIRCUIT OVERLOOKS THE IMPLICATIONS *TURFAH* WILL HAVE ON AN IMMIGRANT'S BURDEN AND ABILITY TO NATURALIZE

Turfah v. United States Citizenship & Immigration Services establishes that an immigrant who validly applies for and has been approved for LPR status may lose the status as a result of procedural violations committed by government agents.[103] In doing so, it establishes a precedent that could create unfair and unpreventable consequences for immigrants seeking LPR statuses.[104]

While it is reasonable to require compliance with immigration laws, *Turfah* was wrongly decided on two counts.[105] First, Part A of this Section discusses how the ruling in *Turfah* creates a new burden for immigrants to

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[98] *See Gonzales*, 429 F.3d at 1184 (noting that Gonzales had a criminal history where he was convicted for possession to sell cocaine). Technically, in *Savoury*, the INS was in fact informed of this criminal history, but it was not properly considered and noted when the LPR status was granted. Savoury v. U.S. Attorney Gen., 449 F.3d 1307, 1310 (11th Cir. 2006). If it had been realized, the LPR status would have been denied out of hand because a felony conviction is a bar to LPR status. *Id.*

[99] *See* 8 U.S.C. § 1182(a)(2)(A)(i)(II) (rendering all aliens who have violated a U.S. controlled substance law or conspired or attempted to violate a law inadmissible for any U.S. visa or for entry into the country).

[100] *Turfah II*, 845 F.3d at 674.

[101] Petitioner's Motion for Summary Judgment, *supra* note 64, at 7–8.

[102] *See id.* (stating that "the principal alien secured a valid immigrant visa through the appropriate diplomatic channels" and Turfah's father became a naturalized citizen).

[103] Turfah v. U.S. Citizenship & Immigration Servs., 845 F.3d 668, 675 (6th Cir. 2017) "*Turfah II*".

[104] *See id.* at 676–77 (Boggs, J., concurring) (noting that USCIS has not made it clear what Turfah's status is now, or how he can adjust his status).

[105] *Turfah II, 845 F.3d at* 674–75.

monitor immigration procedure.[106] Second, Part B of this Section discusses how the ruling leaves LPRs in Turfah's situation without a clear method to remedy the deficiencies in their LPR status so that they may eventually naturalize.[107]

A. Turfah *Unfairly Burdens Immigrants with Ensuring That United States Immigration Authorities Comply with the Law*

Because of the court's decision in *Turfah*, an LPR-eligible immigrant may be denied lawful admission through pure procedural error and no fault of the alien.[108] This reasoning places a burden on applicants to ensure that the U.S. government does not commit any errors when admitting them into the country.[109] This burden falls on immigrant applicants already shouldering the substantial burden of providing all required information in good faith to immigration services.[110] After *Turfah*, the onus is now on the alien to ensure that governmental agents are not making mistakes that will impact

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[106] *Id.* at 675; *see infra* notes 108–122 and accompanying text.

[107] *Turfah II*, 845 F.3d at 675 (observing that Turfah's case is sympathetic but placing the onus on USCIS to utilize discretion and come up with a solution to allow Turfah to eventually naturalize); *id.* at 676–77 (Boggs, J., concurring) (observing there is not an established procedure for someone who already has LPR status to reapply for lawful admission); *see also infra* notes 123–135 and accompanying text.

[108] *Turfah II*, 845 F.3d at 674–75.

[109] *See* Injeti v. U.S. Citizenship & Immigration Servs., 737 F.3d 311, 316 (4th Cir. 2013). The court in *Injeti* briefly addressed this issue when ruling that an alien who had misrepresented herself was not lawfully admitted as a LPR. *Id.* The court stated that it is not the job of an alien to provide affirmative evidence that would refute any and all admission issues; however, an alien does have to provide proof when there is "reason to suspect" unlawful admission. *Id.* This observation implies that an alien does still have to show proof whenever a reason of doubt arises. *Id.* This case is distinct from *Turfah*, however, because in *Injeti* there was clear misrepresentation, and the applicant was not eligible for LPR status without that mistake. *Turfah II*, 845 F.3d at 674; *see generally* HUMAN RIGHTS FIRST, CROSSING THE LINE: U.S. BORDER AGENTS ILLEGALLY REJECT ASYLUM SEEKERS (2017), http://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf [https://perma.cc/U2CA-DSJE] (documenting instances where U.S. immigration authorities illegally deny immigrants interviews or entry and only follow procedures when prompted by professional immigration advocates, illustrating an unfair burden on immigrants to know their rights and U.S. immigration policies).

[110] *See* Immigration and Nationality Act, 8 U.S.C. § 1361 (2012); Petitioner's Motion for Summary Judgment, *supra* note 64, at 8–9. Section 1361 establishes an alien's burden of proof when applying for a visa. 8 U.S.C. § 1361. It is the alien's responsibility to show that he or she is eligible for the visa and that he or she has the proper documents. *Id.* This statute is silent, however, on what to do when an alien has already been determined eligible for a visa but is then found to be unlawfully admitted because the government failed to inform the alien he is too early. *Id.* Turfah and his father arguably already carried out their burden when they were validly approved for an LPR visa; the only unlawful component arose when Turfah was mistakenly admitted early by immigration authorities. *Turfah II*, 845 F.3d at 674. The court acknowledged that the only basis for Turfah's denial was governmental oversight. *Id.* at 674–75.

their lawful admission.[111] This additional burden should not fall on foreign immigrants, and particularly not on minor immigrants arriving on derivative visas.[112] It is not reasonable to expect these applicants to know and understand U.S. immigration law well enough to ensure governmental agents follow appropriate procedure and to correct them when they do not.[113]

The court reasons that permitting derivative applicant minors who arrive before their respective principal applicants would create pandemonium for U.S. immigration officials.[114] The court postulates a future "slippery slope," wherein very young children are sent to the United States without guardians, for potentially much greater time intervals.[115] It is reasonable to uphold the principles of a derivative visa requiring a child to enter the United States with or after a parent's arrival.[116] Nevertheless, whether derivative applicants should be able to legally arrive without their guardians is not the issue.[117] Rather, the problem this decision creates is that a U.S. government official should bear the responsibility of informing an otherwise qualified derivative LPR applicant that he or she must wait until their guardian is with them to enter.[118]

It seems unlikely that the intent of the INA is to deny a minor child, like Turfah, lawful admission as a result of governmental failings when he would have otherwise rightfully earned his LPR status alongside his father.[119] The Supreme Court has determined that Congress' intent in creating

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[111] *See* Petitioner's Motion for Summary Judgment, *supra* note 64, at 7–8.

[112] *See id.*

[113] *See* 8 U.S.C. § 1361; Petitioner's Motion for Summary Judgment, *supra* note 64, at 8–9.

[114] *See Turfah II*, 845 F.3d at 674–75 (observing that the "accompanying" component of a derivative visa is reasonable and its absence could create a chaotic situation where minors are allowed to immigrate long before their guardians; Defendant's Motion for Summary Judgment, *supra* note 64, at 9 (observing that a derivative visa holder cannot arrive before the principal applicant).

[115] *See Turfah II*, 845 F.3d at 674 (imagining the results of immigrant children arriving days or months before their parents).

[116] *See id.* at 674–75 (noting that the accompanying requirement for a derivative visa is not "absurd").

[117] *Id.*

[118] Petitioner's Motion for Summary Judgment, *supra* note 64, at 8; *see Turfah II*, 845 F.3d at 677 (Boggs, J., concurring) (noting that the government admitted its own responsibility and fault for the procedural mistake of allowing Turfah in prematurely when they should have turned him away).

[119] Petitioner's Motion for Summary Judgment, *supra* note 64, at 8; *see* Cynthia S. Anderfuhren-Wayne, *Family Unity in Immigration and Refugee Matters: United States and European Approaches*, 8 INT'L J. REFUGEE L. 347, 352–53 (1956) (stating that the "legislative concern" of Congress when creating the INA was to emphasize family unity); *see also* Lau v. Kiley, 563 F.2d 543, 547 (2d Cir. 1977) (stating that the underlying principle of visas in U.S. immigration law is family unity).

the INA was a concern for family preservation and unity.[120] The goal of derivative visas is to unite family members, not to penalize those who suffer procedural negligence but were otherwise entitled to legal entry.[121] There is room to distinguish cases where an immigrant's criminal history is negligently overlooked by immigration authorities from someone who meets all of the qualifications for LPR status but is forced into noncompliance with the law because of governmental agency incompetency.[122]

B. Turfah *Leaves Immigrants in Limbo with No Vehicle for Naturalization*

The court's decision in *Turfah* raises the question of what this means for Turfah's current LPR status and any future attempts he makes to naturalize.[123] Although Turfah's LPR status can no longer be rescinded by USCIS because he has had it for longer than five years, the court found him unlawfully admitted and, therefore, ineligible to meet the requirements of naturalization.[124] The Sixth Circuit operated under the assumption that Turfah currently has LPR status, even though he was not lawfully admitted.[125] However, Judge Boggs notes in his concurrence that the government provided "inconsistent statements" about whether or not Turfah is still a LPR.[126] USCIS had previously stated that Turfah was a "nonimmigrant," but then on other occasions stated that he still had LPR status.[127] Assuming as the majority did that Turfah is still a LPR, this case's holding does not establish a

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[120] Anderfuhren-Wayne, *supra* note 119, at 353; Monique Lee Hawthorne, *Family Unity in Immigration Law: Broadening the Scope of "Family"*, 11 LEWIS & CLARK L. REV. 809, 814–15 (2007).

[121] *Lau*, 563 F.2d at 547; Petitioner's Motion for Summary Judgment, *supra* note 64, at 7–8; Anderfuhren-Wayne, *supra* note 119119.

[122] Petitioner's Motion for Summary Judgment, *supra* note 64, at 6–7; *see also Turfah II*, 845 F.3d at 674 (conceding that the cases USCIS provided for their supporting arguments were all "factually more extreme" than Turfah's situation and involved undisclosed or misrepresented criminality). *Compare Turfah II*, 845 F.3d at 670, 675 (stating that Turfah was not lawfully admitted for permanent residency because he entered before his father), *with Injeti*, 737 F.3d at 316 (stating that Injeti was not lawfully admitted due to committing marriage fraud and submitting fraudulent documents when applying for LPR status), *and* Arellano-Garcia v. Gonzales, 429 F.3d 1183, 1184 (8th Cir. 2005) (stating that Gonzales was not lawfully admitted because he was convicted of an aggravated felony involving controlled substances, was deported, and illegally reentered the country).

[123] *Turfah II*, 845 F.3d at 676 (Boggs, J., concurring).

[124] *Id.*; *see also* 8 U.S.C. § 1256 (noting that USCIS can rescind LPR status during the first five years after the status is adjusted). In *Turfah II*, the five-year time period in which USCIS can rescind LPR status had passed, so regardless of the court's ruling that Turfah was not lawfully admitted, the government cannot rescind his LPR status or remove him. *Turfah II*, 845 F.3d at 676 (Boggs, J., concurring).

[125] *Turfah II*, 845 F.3d at 676 (Boggs, J., concurring).

[126] *Id.*

[127] *Id.*

procedure for how a LPR can change his status from unlawful to "lawful admission."[128] Moreover, there is no known process in existence for an immigrant that is already considered a LPR to petition to adjust that status to be "lawfully admitted."[129] The court expressed a hope that USCIS would exercise discretion in assisting Turfah to reapply for LPR, but this outcome is unlikely considering USCIS is responsible for the continued denial of Turfah's naturalization application in the first place.[130] Judge Boggs suggests that Turfah could become lawfully admitted if he can convince USCIS to permit him to file an adjustment of status form (Form I-485) and USCIS grants that change.[131] It seems apparent that Turfah would need to reapply for LPR altogether to render his admission lawful, but it is unclear whether USCIS will allow Turfah to reapply and, if so, whether he could lose the status he has now in the reapplication process.[132] Given that Turfah's statutory violation is the result of the U.S. government's mistake, it seems that the responsibility should fall on the government to suggest a solution to remedy their error.[133] Moreover, given that *Turfah* has opened up the door to future governmental negligence rendering immigrants unlawfully admitted, it is prudent that the government come up with a documented procedure for how to handle these cases so that immigrants are not left in limbo with no recourse or clear status in the future.[134] Turfah has been in the United States for over two decades, and his immigration status should not be left in flux because of the government's oversight.[135]

CONCLUSION

Permanent residency and naturalization in the United States are highly regulated and sought-after statuses with numerous eligibility requirements. "Lawful admission" as a LPR is necessary to naturalize, but its definition was ambiguous and required further interpretation by the BIA and several circuit courts. Every circuit court that has deciphered the issue has upheld the BIA's ruling in *Koloamatangi*, holding admission unlawful if it involved fraud, misrepresentation, or if the alien was not eligible for LPR status absent a mistake. In *Turfah*, the Sixth Circuit expanded on *Koloamatangi* by

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[128] *Id.* at 676–77.
[129] *Id.* at 677.
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *See id.* (noting that the government acknowledged its error in admitting Turfah early and not turning him away when they should have).
[134] *Id.*
[135] *Id.* at 670, 677.

determining that admission may be unlawful as a result of procedural negligence committed by the U.S. government, even if an alien was otherwise properly entitled to LPR status. This holding affects not only the definition of "lawful admission" but also has potential implications on the burden an immigrant bears when entering the country, as well as what becomes of an immigrant's LPR status if he pursues reapplying for LPR status to right the government's error.

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